

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 94-652-C - ORDER NO. 95-652 ✓

MARCH 17, 1995

IN RE: Application of XIEX Telecommunications, Inc.) ORDER
for a Certificate of Public Convenience and) APPROVING
Necessity for Authority to Provide Resold) CERTIFICATE
Intrastate Interexchange Telecommunications)
Services Within the State of South Carolina.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of XIEX Telecommunications, Inc. (XIEX or the Company) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of telecommunications services in the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1993) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed XIEX to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of XIEX's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. XIEX complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate).

Discussions between XIEX and the Consumer Advocate led XIEX to agree to certain amendments to its proposed tariff. Subsequently, the Consumer Advocate informed the Commission that it was satisfied that PBS's offering was consistent with other resellers approved by the Commission and that the Consumer Advocate would not participate in the scheduled hearing in this Docket.

A public hearing was commenced on March 7, 1995, at 11:00 a.m., in the Commission's Hearing Room. The Honorable Rudolph Mitchell, Chairman, presided. XIEX was not represented by counsel; Florence P. Belser, Staff Counsel, represented the Commission Staff.

In support of its Application, XIEX presented the testimony of Kyle L. Pentecost, co-founder, stockholder, and Secretary of XIEX. Mr. Pentecost explained the Company's request for authority to provide interexchange telecommunications services in South Carolina as a non-facilities based reseller. Mr. Pentecost described the Company's services, its managerial, technological, and financial resources, and its marketing procedures. Mr. Pentecost testified that XIEX was withdrawing the prepaid calling card (or debit card) offering from its tariff and would also amend its tariff to reflect a maximum rate schedule and a current rate schedule. Mr. Pentecost stated that XIEX will provide its services in compliance with the Commission's rules and regulations.

After full consideration of the applicable law, the Company's Application, the evidence presented by the Company and the Commission Staff, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. XIEEX is incorporated under the laws of the State of Nevada, and has received a Certificate of Authority to Transact Business as a Foreign Corporation in the State of South Carolina.

2. XIEEX operates as a non-facilities based reseller of interexchange services and wishes to do so in South Carolina.

3. XIEEX has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to XIEEX to provide intrastate interLATA service and to originate and terminate toll traffic in the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Services (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for XIEEX for its resale services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. XIEEX shall not adjust its rates below the approved maximum level without notice to the Commission and to the public.

XIEX shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1993).

4. XIEX is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

5. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if they so desire.

6. XIEX shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If XIEX changes underlying carriers, it shall notify the Commission in writing.

7. With regard to the origination and the termination of toll traffic in the same LATA, XIEX shall comply with the terms of

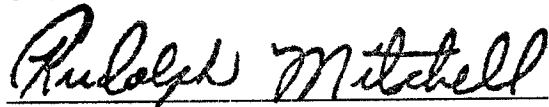
Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993).

8. XIEX shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

9. XIEX shall file its revised tariff and accompanying price list reflecting the findings herein and its agreed upon tariff amendments (including the withdrawal of the debit card offering) within thirty (30) days of the date of this Order. The revised tariff shall be consistent with the Commission's Rules and Regulations. Further, the tariff shall be filed with the Commission in a loose-leaf binder.

10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


CHAIRMAN

ATTEST:


Executive Director

(SEAL)

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ATTACHMENT A

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12 MONTHS
ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

*THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION WORK IN
PROGRESS, ACCUMULATED DEFERRED INCOME TAX, CONTRIBUTIONS IN AID OF
CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR ENDING
_____.

*THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL
AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3
ABOVE).